

DOCKETED

FILED

OCT 19 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

H. STUART CUNNINGHAM
At.....o'clock.....
CLERK

ALLIED LEISURE INDUSTRIES, INC.,)
)
Plaintiff,)
)
v.)
)
MIDWAY MANUFACTURING CO.,)
)
Defendant.)

C

Civil Action No.

73C 2682

AFFIDAVIT OF GEORGE H. GERSTMAN IN SUPPORT
OF MOTION FOR TEMPORARY RESTRAINING ORDER

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

GEORGE H. GERSTMAN, being duly sworn, deposes and says:

1. I am a member of the law firm of Lettvin and Gerstman,
having an office at 135 South LaSalle Street, Chicago, Illinois 60603, and
I am a member of the Bar of the State of Illinois, the United States District
Court for the Northern District of Illinois, the Court of Appeals for the
Seventh Circuit, and the United States Supreme Court.

2. I am a registered patent attorney and represent Allied Leisure
Industries, Inc., the Plaintiff in this lawsuit. I have prepared the
Complaint to be filed in this lawsuit, and to the best of my knowledge and
belief, the statements and allegations therein are true.

3. I have a background in electrical engineering, as I have worked in an electronic engineering capacity and have a Bachelor of Science degree in electrical engineering from the University of Illinois. I have had an opportunity to compare Defendant's accused printed circuit against Plaintiff's copyrighted printed circuit and, in my opinion, the printed circuit drawings are essentially identical, in that with respect to both Defendant's accused printed circuit drawing and Plaintiff's copyrighted printed circuit drawing, all lines are essentially the same size, in the same direction, the holes are in the same place, and the false lines present in Plaintiff's copyrighted printed circuit drawing are also present in Defendant's accused printed circuit drawing. I am familiar with the laws respecting copyright infringement and it is indisputable that Defendant has copied Plaintiff's copyrighted printed circuit drawing to obtain Defendant's printed circuit drawing.

4. I understand the process of originally deriving a printed circuit, and it is an extremely complex process, requiring originality and a substantial amount of artistry and artwork revisions. To merely copy another's artwork may give the copier thousands of man-hours of improper benefit.

5. Defendant's accused printed circuit boards form the basic circuit for Defendant's four player ping pong or tennis game, which Defendant is now offering for sale throughout the world. For many months,

Plaintiff has been selling its four player ping pong or tennis game throughout the world and has established excellent customer relations and sales territories. However, Defendant's game, which is substantially identical to Plaintiff's game, is offered for sale at a much lower price because of Defendant's pirating of Plaintiff's printed circuit board and concomitant savings in developmental costs.

6. Plaintiff has been notified by at least one customer that the customer expects a lower price or else the customer will purchase its game requirements from Defendant. By reason of Defendant's price cutting, Plaintiff's existing market is being diluted and Plaintiff's customers expect Plaintiff to cut its price to meet the price of Defendant.

7. Once Defendant's games are sold to a distributor, they are further sold to stores, restaurants, etc. throughout the world and become difficult, if not impossible, to trace. In such manner, the pirated printed circuit boards will become dispersed throughout the world if Defendant is not immediately enjoined from selling its pirated printed circuit board.

8. In addition, once Defendant establishes a low price for the four player ping pong or tennis game, Plaintiff will be unable to maintain its normal price and its market will be ruined. It is thus imperative that Defendant be stopped immediately from its willful pirating of Plaintiff's printed circuit board.

9. This lawsuit and the Motion For Temporary Restraining Order

were prepared as rapidly as possible in order for Plaintiff to obtain immediate relief. I am also proceeding to prepare an appropriate Affidavit for impounding, by the United States Marshal, of the infringing copies and all means for making the copies.


George H. Gerstman

Subscribed and sworn to before me this 18th day of October,
1973.


Notary Public